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September 10, 1996

RECEIVED

SEP 10 1996

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

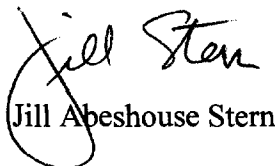
**Re: Section 257 Proceeding To Identify And Eliminate
Market Entry Barriers For Small Businesses
(GN Docket No. 96-113)**

Dear Mr. Caton:

I am transmitting herewith an original and six copies of the comments of Mobile Communications Holdings, Inc. ("MCHI") in the above-referenced proceeding.

Should there be any questions concerning this matter, kindly communicate with the undersigned.

Sincerely,


Jill Abeshouse Stern

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

SEP 10 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re the matter of

Section 257 Proceeding To
Identify And Eliminate Market Entry
Barriers For Small Businesses

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GN Docket No. 96-113

COMMENTS

Submitted by:

MOBILE COMMUNICATIONS
HOLDINGS, INC.

Jill Abeshouse Stern
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
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Its Attorneys

September 10, 1996

SUMMARY

Section 257 of the Telecommunications Act requires the Commission to eliminate market entry barriers for small businesses and entrepreneurs. A prime candidate for elimination is Commission Rule 25.143(b)(3) which imposes an overly stringent financial standard upon satellite applicants in the 1.6/2.4 Mobile Satellite Service (Big LEO). Under this standard, smaller companies such as Mobile Communications Holdings, Inc. (MCHI), the developer of the ELLIPSOTM satellite system, must meet a far more rigorous evidentiary showing of "irrevocably committed" funds in contrast to their larger competitors who may qualify merely on the basis of a sizable balance sheet even though they intend to rely only upon external sources of financing. Smaller companies must also face an additional handicap (not imposed on their larger competitors) because Commission rules require public disclosure of the terms of highly sensitive business arrangements; this mandatory disclosure causes competitive harm to the smaller businesses by, among other things, identifying financing sources and investors to larger competitors and potentially discouraging third party vendors and financiers from entering into business arrangements with small businesses.

Indeed, the financial barrier created by Commission rules is virtually insurmountable by small businesses and entrepreneurs who must obtain irrevocable commitments for the entire system cost, before receiving licensing and regardless of business need. This financial qualification standard was criticized by the Small Business Administration in an April 1996 letter to the Commission, as an "unequal and unduly burdensome" regulatory requirement which erects "an artificial market entry barrier to virtually all small competitors."

MCHI's specific case --- in which its three giant competitors received licenses in January 1995 while MCHI's application was deferred --- graphically illustrates the exclusionary nature of the Big LEO rules which fail to consider the unique ways in which small businesses access capital. MCHI's business plan, for example, calls for progressive system deployment so that commercial service can be offered (and revenues generated) at an earlier stage of system implementation. The rejection of MCHI's innovative market strategy in favor of a financial test tailored to giant corporations (indeed a test that only a handful of U.S. companies can meet) demonstrates that market entry barriers for small businesses and entrepreneurs can be eliminated only if the Commission is willing to consider and accommodate the diverse ways in which such entities finance telecommunications projects.

The Commission should take immediate steps to eliminate the existing market entry barriers for small businesses seeking Big LEO licenses and to foster small business participation in this new service by (1) revising Rule 25.143(b)(3) to allow for more flexible financial showings consistent with long-standing satellite policies that have fostered diversity in the satellite industry; and (2) until those rules can be revised, using existing tools, including waivers, in considering the financial showings submitted by small businesses, such as MCHI, seeking Big LEO licenses.

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION AND SUMMARY	1
II. THE BIG LEO FINANCIAL STANDARD	4
A. The Big LEO Financial Standard Creates a Market Entry Barrier for Small Businesses Contrary to Section 257	4
B. The Big LEO Financial Standard Fails to Consider the Unique Ways in Which Small Businesses Access Capital	6
C. The Commission's Use of More Flexible Financial Standards Has Successfully Fostered Innovation, Competition and Diversity in the Satellite Industry Consistent with the Goals of Section 257	9
III. CONCLUSION	12

EXHIBITS

- Exhibit A: Declaration of Davinder Sethi, Senior Advisor to Barclays de Zoete Wedd Limited, and Letter from Trevor Nash, Director, Barclays de Zoete Wedd, to William F. Caton
- Exhibit B: April 24, 1996 Letter from Jere Glover, Chief Counsel, Office of Advocacy, Small Business Administration, to FCC Chairman Reed Hundt
- Exhibit C: Congressional Letters

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Section 257 Proceeding to)	GN Docket No. 96-113
Identify and Eliminate Market Entry)	
Barriers for Small Businesses)	

COMMENTS

Mobile Communications Holdings, Inc. (MCHI), by its attorneys, hereby submits its comments with respect to the Commission's Notice of Inquiry (Notice or NOI) in the above-captioned proceeding^{1/} in which the Commission seeks to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services" as mandated by Section 257 of the Telecommunications Act of 1996.^{2/}

I. INTRODUCTION AND SUMMARY

MCHI is the developer of ELLIPSO™, a low-Earth orbit mobile satellite system in the 1.6/2.4 GHz bands (also known as a "Big LEO" system) that will provide mobile voice and data

^{1/} Notice of Inquiry, GN Docket No. 96-113, FCC No. 96-216, released May 21, 1996.

^{2/} Telecommunications Act of 1996, Pub. L. No. 104-104, § 257, 110 Stat. 56 (signed February 8, 1996). The Commission defines "market entry barriers" to "include obstacles that deter individuals from forming small businesses, barriers that impede entry into the telecommunications market by existing small businesses, and obstacles that small telecommunications businesses face in providing service or expanding within the telecommunications industry." Notice at ¶ 4.

services in the United States and worldwide. The company, which qualifies as a small business,^{3/} was started in 1990 for the purpose of constructing, launching and operating the ELLIPSO™ system. MCHI believes that its experiences over the past six years in trying to obtain licensing of its system by the Commission are directly relevant to the Notice of Inquiry. These experiences illustrate the unique ways in which small businesses and entrepreneurs access capital and credit, and provide a specific example of a market entry barrier created by governmental regulation, namely, the inappropriate use of overly stringent financial qualifications standards, particularly when they give great advantage to large businesses.

MCHI was the first company to file a license application for a Big LEO system in November 1990, and, over the past six years, has spent millions of dollars in developing and marketing the ELLIPSO™ system and participating in protracted regulatory proceedings. MCHI's innovative technical design, and lower consumer cost, have been praised by independent organizations such as the MITRE Corporation.^{4/} Yet MCHI has not received a license for its system, while its

^{3/} For this purpose, MCHI relies upon the SBA's size standards in Part 121 of the SBA's regulations, see 13 CFR § 121.101 et. seq., which reference the most recent Table of Small Business Size Standards (March 1996). Under those regulations, the relevant size standard is 1500 employees (for companies providing radiotelephone services) or \$11 million in annual receipts (for companies providing communications services not otherwise classified), depending upon which standard industrial classification is used. Although MCHI qualifies under these minimal standards, it notes that Section 257 pertains to "entrepreneurs and other small businesses." This supports adoption by the Commission of a more expansive definition of small business for purposes of implementing Section 257, particularly where a capital intensive service, such as the Big LEO service, is involved.

^{4/} See, e.g., Geffney, L.M., Hulkower, N.D., Klein, L., Lam, D.N., A Reevaluation of Selected Mobile Satellite Communications Systems: Ellipso, Globalstar, Iridium and Odyssey (The Mitre Corporation 1994).

three large corporate competitors have already received licenses and are moving ahead in the marketplace.

This inequitable situation has been created by the Commission's Big LEO licensing rules which present exactly the type of market entry barrier for small businesses that Congress is seeking to eliminate in Section 257 of the Telecommunications Act and which deny the benefits of entrepreneurship to the public. Specifically, the Commission's Big LEO financial standard, set forth in Commission Rule 25.143(b)(3) (referencing Rule 25.140(c) and (d)), adversely impacts small businesses in the following ways: the standard (1) fails to take into account the unique ways in which smaller businesses access capital; (2) provides an unfair advantage to giant companies who may qualify solely on the basis of a "paper" balance sheet test in contrast to smaller companies who must demonstrate "irrevocable commitments" even though larger companies, like their smaller competitors, are planning to rely on external sources of financing; (3) does not provide clear direction as to what financial information will satisfy the standard;^{5/} and (4) unfairly requires smaller companies to disclose the terms of highly sensitive business arrangements including the identity of financing sources (thereby providing another disadvantage to smaller companies in pursuing alliances with or investments by third parties and unfairly benefitting their larger competitors).^{6/}

^{5/} Given the ambiguity in the Commission's decisions, and the limited precedent available on the issue of what information will satisfy the Commission's financial standard, MCHI has sought guidance as to the Commission's interpretation of the Big LEO rules pursuant to Section 213 of the Small Business Regulatory Enforcement Fairness Act of 1996. Section 213 entitles small entities to seek agency guidance with respect to regulatory compliance.

^{6/} In addition, the Commission adopted auction rules for the Big LEO service which erroneously failed to consider measures for promoting participation by small businesses in

Footnote continued on next page

There are compelling public interest reasons for elimination of the double standard inherent in the Big LEO financial rules, and for return to the more flexible financial standard that has fostered innovation, competition and diversity in the satellite field. However, the Commission does not necessarily need to initiate a rulemaking to eliminate or reduce the existing market entry barrier to small businesses created by Commission Rule 25.143(b)(3). The Commission today possesses adequate authority --- including waivers, modifications and other procedural variations --- to assure a level playing field for small businesses, entrepreneurs and similar entities in the satellite industry so as to assure access to capital markets under conditions no less advantageous than those enjoyed by large corporations who are allowed to qualify solely on the basis of their balance sheets.⁷¹ The Commission has an opportunity to use these existing tools in considering pending Big LEO applications, including MCHI's, in order to ensure meaningful opportunities for small business ownership as Congress intended.

II. THE BIG LEO FINANCIAL STANDARD

A. The Big LEO Financial Standard Creates a Market Entry Barrier for Small Businesses Contrary to Section 257

The Big LEO licensing rules, adopted in September 1994, include stringent financial qualification standards, the practical effect of which are to erect market entry barriers to

Footnote continued from previous page

an auction, as required by Section 309(j) of the Communications Act. The Commission erroneously concluded that small business consideration was unnecessary because none of the applicants qualifies as a small business. MCHI has raised this error in its pending court appeal. See Mobile Communications Holdings Inc. v. FCC, Case No. 94-1695 (D.C. Cir.)

⁷¹ In the Report of the National Performance Review, one of the major recommendations (SMC08) was to "expand the use of waivers to encourage innovation."

telecommunications ownership by entrepreneurs, small businesses and similar entities.^{8/} In the Big LEO Order, the Commission essentially reversed long-standing policies with respect to new satellite services, particularly those involving international communications, by imposing a strict financial standard that had previously been applied only to the mature domestic satellite industry.

Under this strict financial standard, applicants may demonstrate financial qualifications on the basis of a corporate balance sheet or, alternatively, on the basis of fully negotiated, irrevocable financing commitments. While large companies thus need only submit a balance sheet demonstrating that "they, or their corporate parents have current assets (cash, inventory, and accounts receivable) and operating income sufficient to cover the costs of construction and launch of the system's space segment, and of operating for one year following the launch of the first satellite," along with a management "commitment" letter,^{9/} companies without such substantial assets must provide evidence that external financing "is 'irrevocably committed,' i.e., that it has been approved and does not rest on contingencies which require action by either party to the transaction."^{10/}

^{8/} In the Matter of Amendment of the Commission's Rules to Establish Rules and Policies pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Band, Report and Order, 9 FCC Rcd 5936 (1994) (the "Big LEO Order").

^{9/} This management letter need only indicate that the company is "prepared to expend the necessary funds" subject to market conditions. *See, e.g.*, Big LEO Order, supra, 9 FCC Rcd at 5952. The Commission does not require the company to make an unalterable commitment that the funds will be expended.

^{10/} In re Applications of Constellation Communications, Inc.; Loral/Qualcomm Partnership, L.P.; Mobile Communications Holdings, Inc.; Motorola Satellite Communications, Inc.; TRW Inc., Memorandum Opinion and Order, FCC 96-279, released June 27, 1996, at ¶ 11. See also 47 C.F.R. § 25.140(c) & (d), 47 C.F.R. § 25.143(b)(3); Big LEO Order, supra, 9 FCC Rcd at 5950-52.

This standard unfairly favors giant corporations who may submit a balance sheet, regardless of whether the funds reflected on paper are actually committed to the project and even though the giant corporation, like its smaller competitors, will likely turn to external financiers and investors to fund its system.^{11/} The Office of Advocacy of the Small Business Administration filed a letter with the Commission on April 24, 1996 objecting to the "unequal and unduly burdensome financial qualification standards for small businesses set by the Commission in the satellite industry." ^{12/} Indeed, the SBA raised concerns about the Commission's "de facto financial qualification system, favoring larger companies and handicapping smaller ones," concluding that the "Commission's overly stringent financial qualification standards erect an artificial market entry barrier to virtually all small competitors." Members of Congress have raised similar concerns.^{13/}

**B. The Big LEO Financial Standard Fails to Consider the
Unique Ways in Which Small Businesses Access Capital**

The Big LEO financial standard fails to consider the unique ways in which small businesses access the capital markets. Unless the Commission's rules take into account the different market approaches and strategies used by small businesses, particularly the unique ways in which such companies attract funding, those rules will effectively preclude ownership opportunities for

^{11/} The Commission surprisingly views the two tests as "exactly equivalent." See Opposition of the Federal Communications Commission to Petitioner's Emergency Motion for a Stay Pending Review, Mobile Communications Holdings, Inc. v. FCC, No. 94-1695 (D.C. Cir.), filed November 14, 1994, at 13-14. See also Big LEO Order, supra, 9 FCC Rcd at 5952. Certainly, no financial expert would agree. See Declaration of Davinder Sethi, Senior Advisor to Barclays de Zoete Wedd Limited, the investment banking arm of the Barclays Group, and Letter from Trevor Nash, Director, Barclays de Zoete Wedd, to William F. Caton, both of which were submitted in the record of the Big LEO proceeding and which are attached hereto as Exhibit A for the Commission's convenience.

^{12/} See Exhibit B hereto.

^{13/} See Exhibit C hereto.

small businesses regardless of the Commission's intentions. The application of the Commission's financial standards in the case of a particular small enterprise must be informed by the financial context in which smaller businesses operate. Obviously, if the Commission applies its financial standards relying on premises that can only be realized in the financial world of large corporations, entrepreneurial enterprises will be barred from entry into the satellite telecommunications market as system owners. This is clearly contrary to the intent of Section 257 to promote diversity of ownership.

As a small company seeking entry in a capital-intensive business, MCHI's experiences illustrate the entry barrier created where the Commission does not take into consideration the financial realities faced by entrepreneurs. MCHI's business plan is based on the satellite system's unique constellation design (patent pending) which permits initiation of commercial service after eight satellites are launched. This is in contrast to MCHI's competitors who may not be able to provide service until the entire system is operational.

Fundamental to MCHI's approach, in 1990 and today, and inherent in the design of its orbits, is the concept of progressive deployment and growth to meet demand. While MCHI will, of course, deploy the entire system, its ability to introduce commercially viable, 24-hour service, in stages by region provides a unique market advantage which has been favorably received by the financial and user communities. This approach allows an opportunity for assessing the technology and market demand in an operating environment.^{14/} Progressive deployment also allows the

^{14/} See Declaration of Davinder Sethi (Exhibit A hereto) which provides an expert financial opinion that progressive deployment "is the only sensible approach" in a new and commercially unproven service.

system operator to use operating revenues and income to finance further system expansion and to provide a basis for future public offerings. It results in a much more efficient use of capital which in turn, reduces in system and, ultimately, consumer cost.

MCHI thus developed an innovative business plan and market strategy that was entirely appropriate, and achievable, for a small business in a new capital-intensive telecommunications business. The Commission's financial standard, which requires the applicant to show that it has **"irrevocable commitments" for the entire system cost at the outset**, before it even receives a license, is wholly inconsistent with financial reality and does not accommodate the diverse market strategies that smaller companies, like MCHI, have developed.^{15/} The Commission, indeed, has acknowledged the artificiality of such a front-end commitment by allowing large companies to qualify their management commitments upon "normal business reviews of market conditions and the project's progress to assure acceptable levels of risk and return."^{16/}

MCHI's situation thus illustrates the failure of the Big LEO financial standard to consider the financial context in which smaller businesses operate, or to accommodate diverse market approaches used by smaller businesses to access capital. It denies small businesses access to financial markets on terms equivalent to large businesses. It effectively substitutes the FCC's financial judgment for that of the marketplace, which is far better qualified to pick winners. This concrete example also demonstrates that, unless the Commission makes an effort to better understand the

^{15/} It is noteworthy that financial experts at a recent satellite conference expressed the opinion that a satellite license is a prerequisite to financing. See Communications Daily, July 25, 1996 at 7.

^{16/} See, e.g., National Exchange Satellite, Inc., 3 FCC Rcd 6992 (1988). See also, Big LEO Order, supra, at 5952.

financial context and strategies of small businesses, it will be unable to promote small business ownership as Congress mandated in Section 257.

C. The Commission's Use of More Flexible Financial Standards Has Successfully Fostered Innovation, Competition and Diversity in the Satellite Industry Consistent with the Goals of Section 257

The Big LEO financial standard represents a departure from the Commission's prior satellite policies and rules that have successfully encouraged innovation, competition and entrepreneurship in the satellite industry. Previously, the Commission utilized a more flexible financial standard, with procedural variations, designed to encourage new, diverse satellite services and satellite operators under the dual rationale that (a) competition best serves the public interest by, among other things, encouraging innovation and lower prices to consumers; and (b) flexible financial standards allow new satellite services to evolve successfully and provide an opportunity for the Commission to evaluate the new service's characteristics before imposing regulatory requirements that may stifle its development. The Commission should return to these policies and approaches which have proven effective in promoting entrepreneurship in the satellite field.

For example, with respect to private international satellite systems, in 1985 the Commission adopted a two stage approach for review of an applicant's financial qualifications which provided for award of a "preliminary" authorization under a less stringent financial standard (i.e., "financial preparedness") and only required the applicant to identify sources or potential sources of funding with a letter of financial interest.^{17/} A final authorization was issued following international consultation of the system and submission of a more detailed financial showing. The

^{17/} Establishment of Satellite Systems Providing International Communications, 101 FCC 2d 1046, 1164 (1985).

rationale behind this approach was the difficulty of obtaining financing or customers without a construction permit and completion of the Intelsat consultation process. In order to facilitate introduction of the private satellite systems, the FCC also granted liberal extensions of time in which to make the financial showings required for final authority. As a result of this flexible standard, the three private international satellite systems, Orion, PanAmSat and Columbia, were successfully implemented.^{18/}

Similarly, in the Little LEO proceeding, the Commission in 1993 adopted a financial standard which allowed satellite applicants to demonstrate financial qualifications on the basis of financial capability to construct, launch and operate only two satellites in the constellation (representing a small percentage of the entire system cost.)^{19/} This flexible standard, which was adopted by the Commission as most appropriate for a new and commercially unproven service and which was intended to provide the licensee with "additional time to procure full financing," resulted in the successful implementation of the Little LEO service and award of licenses to three satellite companies, including companies which may have been unable to qualify under the strict Big LEO standard.

^{18/} Ironically, the Commission has now proposed, in the DISCO I proceeding, to extend the strict financial test to the private international satellite systems. Even though these satellite companies might not be considered small businesses under the SBA's default definition, they could have difficulty in satisfying the "balance sheet" test proposed by the Commission. This supports a more expansive definition of "small business" for purposes of the satellite industry and this Section 257 proceeding.

^{19/} In the Matter of Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile - Satellite Service, Report and Order, 8 FCC Rcd 8450, 8451-52 (1993).

In the Big LEO proceeding itself, four of the applicants (Motorola, TRW, Constellation and MCHI) in a September 1994 filing jointly recommended a more flexible financial standard which accommodated MCHI's progressive development strategy. The Commission turned it down.

The stringent financial standards adopted by the Commission in the Big LEO proceeding thus represent a radical departure from the Commission's prior policies for new satellite services which have successfully resulted in a robust satellite industry and which have provided the flexibility needed in this industry. The strict Big LEO standards are contrary not only to the FCC's own decisions, but also contravene the important national policies, forcefully reaffirmed in the Telecommunications Act of 1996, with respect to diversity of telecommunications ownership. It has been widely recognized by Congress and the Executive Branch, in successive administrations, that small businesses and entrepreneurial ventures foster innovation, competition and create high-tech, high-paying jobs as well as contribute to U.S. high technology leadership in the global marketplace.

There is no legitimate reason for the Commission's use of a strict financial standard in the Big LEO proceeding and, certainly, no reason which outweighs the national interest in promoting telecommunications ownership opportunities for small businesses and entrepreneurs most recently expressed in Section 257 of the Telecom Act. Although the Commission has claimed that such standards prevent warehousing of spectrum, this conclusion is insupportable in light of the Commission's own experience which has shown that many large companies, including Federal Express, Martin Marietta and others who advocated adoption of a strict financial test in the 1985 domsat

proceedings, never proceed with satellite construction. Enforcement of construction milestones provides an effective tool to prevent warehousing. On the other hand, more flexible financial standards have successfully promoted diversity of satellite ownership in the past, and these standards thus meet the dictates of Section 257.

III. CONCLUSION

In the foregoing comments, MCHI has provided a concrete example, based on its own experience, of existing Commission regulations which create a market entry barrier for small businesses and entrepreneurs. Specifically, Commission Rule 25.143(b)(3) establishes stringent financial standards applicable to Big LEO applicants that place an inequitable burden on small companies in contrast to their larger competitors who may qualify solely on the basis of a sizable balance sheet without setting aside specific funds. In contrast, the Commission's rules require smaller companies to negotiate "irrevocable" business arrangements solely for the purpose of satisfying artificial regulatory requirements, not on the basis of business imperatives, and then force these companies to disclose the terms of their confidential business arrangements to their competitors. Not surprisingly, the Small Business Administration has expressed deep concern "about the Commission's de facto unequal financial qualification standards for smaller companies" which "erect an artificial market entry barrier to virtually all small competitors."

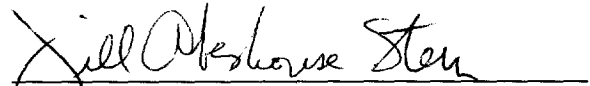
For reasons fully stated above, the Big LEO financial standard is a prime candidate for elimination in the proceedings mandated by Section 257 of the Telecommunications Act. In MCHI's case, however, the Commission has an immediate opportunity to satisfy the dictates of Section 257 without initiating a rulemaking proceeding. On September 16, 1996, MCHI will

submit a supplemental financial showing to the Commission. In reviewing this submission, the Commission has the tools, including the ability to grant a waiver of its rules if necessary, to ensure that application of the Big LEO financial standards is informed by the compelling national interest, expressed in Section 257 of the Telecommunications Act, in fostering diversity of telecommunications ownership. MCHI urges the Commission to act consistently with Section 257.

Respectfully submitted,

MOBILE COMMUNICATIONS
HOLDINGS, INC.

By:



Jill Abeshouse Stern
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
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Its Attorneys

September 10, 1996

EXHIBIT A

**BARCLAYS de ZOETE WEDD LIMITED**

Corporate Finance

Ebbgate House 2 Swan Lane London EC4A 3TS
Telephone 071 623 2323 Fax 071 956 4662/3/4

May 3, 1994

Mr William A Caton
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

**Re: Notice of Proposed Rulemaking
CC Docket No 92-166**

Dear Mr Caton

We are aware of the complexities and challenges facing the FCC's proactive stand on the authorisation of new and innovative global telecommunications services and your efforts to license low-earth orbiting satellite systems. As you establish the rules and policies for the Big LEOs, we would like to present our perspective on the proposed financial qualification standards and hope that these views will be of assistance.

Barclays is one of the world's largest diversified banking and financial services group with representation in over 70 countries. Barclays de Zoete Wedd (BZW) is the investment banking arm of the Barclays Group. BZW acts as financial advisor to Mobile Communication Holding, Inc (MCHI), the holding company for Ellipsat Corporation. BZW has assisted MCHI in developing a business plan and more importantly on advising MCHI on the identification and selection of strategic, technical and financial partners from around the globe.

Based on our experience, the financial standards proposed in the FCC's February 18, 1994 Notice of Proposed Rulemaking do not reflect the rigor of responsive decision-making with respect to financial allocations or commitments for this type of project. Nor do the proposed standards recognise that the true determinant of success is in the marketplace, ie that the market will make judgement on the basis of the strength of the underlying business plan. To elaborate:

- Financial commitments are made periodically after continual assessments of the progress of the project. Corporate sponsors are obliged to do this in response to competing demands on their resources and their obligation to make allocations that best serve their shareholders.

BZW - the investment banking arm of the Barclays Group

Registered number 181846 Registered office as above
Member of STN



- The above is particularly true for new and emerging technologies, such as Big LEOs, where there is little historical evidence of manifest demand and where technical challenges will emerge as the program develops and reaches its operational phase.
- Corporates and the capital markets will commit funds at various stages during the project's development, in different forms, once again based on the continual assessment of the project's milestones and as its risk profile changes over the build phase. We believe the market place recognises the sustainable advantages unique to an applicant, such as technology deployed, marketing strategy, and feature-price advantage, and best determines the survivors and the also-rans.
- Ellipsat's business plan and system design offers unique advantages. Its flexibility and progressive deployment strategy significantly improves the timing of the financial exposure of corporate sponsors and financial investors. This enhances Ellipsat's ability to implement the proposed system.
- We should also note that the strength of the balance sheet of a company, in this case based on the company's other lines of business, should not be construed as evidence of financial viability of the company's Big LEO venture unless the necessary funds are irrevocably committed.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. Nash', enclosed within a large, stylized arrow shape pointing to the right.

Trevor Nash
Director

EXHIBIT A

DECLARATION OF DAVINDER SETHI

I, Davinder Sethi, hereby declare as follows:

1. This declaration is being submitted for association with the comments of Ellipsat Corporation with respect to the Notice of Proposed Rulemaking in CC Docket No. 92-166 ("Notice") proposing licensing and service rules for the Mobile Satellite Service Above 1 GHz. This declaration provides my expert opinion, with respect to the proposed financial qualifications standards for MSS Above 1 GHz licensees, and is based upon my review of the Notice and proposed Rule 25.143(b)(3) which specifies the proposed financial qualification requirements for space station authorizations in this satellite service.

2. I am currently employed as Senior Advisor to Barclays de Zoete Wedd Ltd. in the United Kingdom, the investment banking arm of the Barclays Group. Barclays is one of the world's preeminent investment banking institutions and a leader in advising and financing information technology companies around the world.

3. I have more than fifteen years experience in the fields of information technology and finance. My background spans academia, research, business and investment banking. For the

past five years, I have served in the field of investment banking, first as a director of Barclays de Zoete Wedd and now as a senior advisor to headquarters. In these capacities, my responsibilities include advising major global providers of information technologies and assisting these companies to develop and execute corporate development opportunities.

4. Prior to joining Barclays, I held positions at Bell Laboratories in communications research and at AT&T headquarters in corporate finance. My educational background includes a Ph.D. from the University of California at Berkeley in Operations Research, Economics and Statistics.

5. I am a financial advisor to Mobile Communications Holdings, Inc. (MCHI), the parent company of Ellipsat Corporation. In that capacity, I am assisting, and have assisted, the company with development of its business plan, financing and formation of strategic partnerships for the ELLIPSO system.

6. Based on my extensive experience in financing high technology ventures, and my knowledge of business and strategic plans for the ELLIPSO system, it is my expert opinion that there exists the ability and intention to proceed with implementation of the ELLIPSO system and that the marketplace will provide the necessary financing to meet construction, launch and first year

operating costs by recognizing the investment value of ELLIPSO™'s business plans.

7. After reviewing the Notice and the proposed financial standards, it is my expert opinion that (1) the proposed financial standard does not accommodate differences in the market and business strategies of the various LEO systems; (2) the standard does not reflect the unique characteristics of the Big LEO service and the complexity of the related financing issues; and (3) the standard could discriminate against new entrants, thereby discouraging beneficial competition. Each of these points is discussed below.

The Proposed Financial Standard Does Not
Accommodate Legitimate Variations in Market Approach

8. The proposed financial standard does not accommodate legitimate variations between systems in terms of market approach and strategy. Each of the Big LEO systems has proposed a different market approach and concept. In a new and commercially unproven service, it is my opinion that the ELLIPSO system offers unique advantages because of its flexibility and progressive deployment strategy.

9. ELLIPSO's market strategy and technical design do not require full system funding or implementation on "Day One." ELLIPSO allows a commercially valuable and unique option to offer

a commercial service through partial deployment. This early entry system will generate revenues, facilitating system expansion and providing a basis for later debt and equity offerings. The Commission's financial test does not appear to recognize this innovative market vision, and, indeed, penalizes this potentially cost-effective and efficient approach to service introduction.

10. Progressive deployment is an eminently sensible strategy, indeed, the only sensible strategy from a market and financial standpoint in a new and commercially unproven service. This approach fully comports with market realities and is designed to develop the market for LEO services as a basis for system expansion. The Commission's proposed financial standard may in fact artificially encourage development of systems that are not market-based, resulting in costly failures or abandonment by the developers.

The Proposed Standard Does Not Reflect the
Unique Characteristics of the Big LEO Service

11. A strict financial test is, in my view, unsuitable for an emerging technology such as the Big LEOs. Although promising, the Big LEOs are, as yet, unproven in the marketplace. The proposed systems will be extremely expensive to develop, with projections ranging from \$700 million to over \$3 billion.